BRIDGES AND THEIR UPKEEP .. .. p. 631
PRIVILEGE AND REPORTS OF COURT PROCEEDINGS .. p. 632

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The Solicitors' Journal

VOL. LXXIX. **Saturday, August 31, 1935.** No. 35

Current Topics: The Vacant Lordship of Appeal—The Courts and Driving Tests—Road Safety—Private Enterprise and Housing—Railway Rating: Assessment Authority's Report—Litter—Finger Prints and Palm Prints—Direction Indicators: New Regulations 629
Bridges and their Upkeep 631
Privilege and Reports of Court Proceedings 632
The Sufficiency of Statutory Notices 633
Company Law and Practice 633
A Conveyancer's Diary 635
Landlord and Tenant Notebook .. 636
Our County Court Letter 637
Obituary 637
Points in Practice 638
To-day and Yesterday 640
Reviews 641
Books Received 641
Notes of Cases—
Commissioners of Inland Revenue *v.* Crawshay 641
London Assurance *v.* Kidson .. 641
Berry and Another *v.* Tottenham Hotspur Football and Athletic Co. Limited 642
Jones *v.* London County Council .. 642
Burnett *v.* Burnett 642
Table of Cases previously reported in current volume—Part II 643
Legal Notes and News 643
Stock Exchange Prices of certain Trustee Securities 644

Current Topics.

The Vacant Lordship of Appeal.

As is customary in such circumstances, speculation is rife on the question of the probable successor to LORD TOMLIN in the ultimate appellate tribunal. Various names have been mentioned as possible candidates, if such a term may be employed in such an august connection, but is it certain that the vacancy will be filled? The statute which enabled the number of Lords of Appeal in Ordinary to be increased to seven, namely, the Appellate Jurisdiction Act, 1929, merely empowers His Majesty to appoint an additional Lord of Appeal to the number authorised by previous legislation; it did not require him to do so, and consequently there is no absolute obligation to keep the number at seven if the exigencies of litigation do not necessitate this. While the state of business in the Supreme Court may seem to require additional judges, notwithstanding a strong contrary view of the Lord Chief Justice, the recent curtailment of the right of litigants to carry their cases to the House of Lords might seem to suggest the expediency of diminishing rather than increasing the numerical strength of the House, more especially as the need for economy is still urged upon the nation. We have, of course, no desire to minimise in any way the judicial force of the House of Lords; we merely suggest that it might, as no doubt it will, be taken into consideration whether, in view of the curtailment of appeals likely to be occasioned by the restriction to which we have referred, it is essential that the number of Law Lords should be kept at seven.

The Courts and Driving Tests.

A NOVEL point was raised at the Huntingdon Police Court recently when an application was made for permission to take another driving test within a month from the date of a test which the applicant had failed to pass. It was alleged that the test had not been conducted in accordance with the regulations. Section 6, sub-s. (6), of the Road Traffic Act, 1934, empowers a court of summary jurisdiction (acting for the petty sessional division in which a person who has submitted himself for a test of competence to drive resides) to determine on the application of that person whether the test was properly conducted in accordance with the regulations, and the sub-section goes on to provide that, if it appears to the court that the test was not so conducted, the court may order that the applicant shall be eligible to submit himself to another test before the expiration of the period prescribed by the regulations in accordance with the powers to that end contained in sub-s. (5), para. (*c*), of the same section. The court may also in such circumstances order a repayment of the fee. The solicitor who appeared for the applicant in the case referred to said that the Act provided for an appeal to be made but did not say what form it should take—whether by application, complaint or summons. After some deliberation the application was dismissed. The case appears to be the first of its kind.

Road Safety.

SECTION 49 of the Road Traffic Act, 1930, provides, *inter alia*, that any person driving or propelling any vehicle (the term includes bicycles and hand carts as well as horse-drawn and motor vehicles) who fails to conform to an indication given by a traffic sign shall be guilty of an offence. The section applies, of course, to the new "Halt at Major Road Ahead" device, concerning which a letter was recently sent to highway authorities throughout Great Britain by the Ministry of Transport. As a general rule, it is explained, the new sign is only to be erected at places where the driver of a vehicle approaching a major road from a minor road cannot have a reasonably clear view of the former in both directions. The sign may, however, be desirable at other junctions where there is a fair view, and in those cases the Minister of Transport will be prepared to consider giving his approval when applications are received. The letter suggests that in some cases the new sign may, with advantage, replace an existing "Slow—Major Road Ahead" sign, but the hope is expressed that in all cases the highway authorities will consult the chief officers of police before deciding at which junctions the new sign should be erected. To turn to another aspect of the problem of road safety, *The Times* recently gave an account of a statement of a Ministry of Transport official concerning the road accident statistics which formed the subject of a "Current Topic" in our issue of 17th August. Most of the accidents could, it was said, have been avoided by careful regard for the principles laid down in the new Highway Code, and, as copies of this had been distributed to householders and other responsible persons throughout the country, it was hoped that a reduction of casualties would follow. Allusion was made to what the Ministry has done to make the roads safe for all classes of users by the adoption and encouragement of devices of proved value, but it was emphasised that the success of all safety measures depends entirely on the co-operation of road users. While the question of imposing more severe penalties for traffic offenders did not rest with the Ministry, the official stated that drastic steps would have to be taken by the proper authorities unless there was a great improvement in the position regarding road accidents.

Private Enterprise and Housing.

WE recently alluded to the progress which has been made during the past few years in the provision of houses with State assistance, and it is interesting to turn from this aspect of the problem to what has been done in this direction without such assistance. Sir KINGSLEY WOOD, the Minister of Health, indicates, in the course of a foreword to the "Building Societies' Year Book for 1935," that during the financial year 1934–35, a total of 286,050 houses have been produced by private

enterprise without any assistance on the part of the State. This figure represents an increase of 38 per cent. over the production of the previous financial year, and is more than double that of any earlier year for which figures are available. The Minister states that one factor above all others which made so large an output possible was the building society movement. The editor of the volume alludes to the fact that, at the end of sixteen years of unprecedented housing effort since the end of the war, the activities of building societies are increasing at a faster rate than ever before. For the first time in the history of the movement the number of borrowers exceeds 1,000,000. In the year under review the rise in total assets has been greater than any previously recorded, there having been in this respect an increase of nearly 11 per cent. to over £550,000,000. Advances on mortgage, totalling for the year £124,214,615, show an increase of over 20 per cent. on those of the previous year, while the reserve funds show an increase of nearly £3,000,000 to £27,209,270.

Railway Rating: Assessment Authority's Report.

THE annual report of the Railway Assessment Authority for the year ended 31st March, 1935, has just been issued and is published by the Stationery Office (price 3d.). The report indicates the progress which has been made during the year in the preparation of the first valuation roll in accordance with the provisions of the Railways (Valuation for Rating) Act, 1930. During the year the remaining four parts of the roll have been completed. Each of the five parts of the roll, it is stated, had to be "completed," and then "revised" before the local valuation lists could be amended with retrospective effect to April, 1931. The Southern Railway part of the roll was completed early in the year, the London and North Eastern part just after its close, by which time representations upon the draft roll relating to the London, Midland and Scottish Railway had been heard. No representations were made by the Great Western Railway against their part of the draft roll, but strong representations were made by the two last-named companies and by the Metropolitan Railway and by local authorities against completion of the rolls with which they were concerned until appeals from the decisions of the Railway and Canal Commission on the Southern part of the roll had been determined by the House of Lords. Reference is made to the decision in *Re Railways (Valuation for Rating) Act*, 1930: *Re Appeals by the Southern Railway Co. and Others from a Decision of the Railway Assessment Authority* (79 SOL. J. 127), whereby the Assessment Authority were directed when revising the Southern Railway part of the roll to amend the *cumulo* of £2,180,000 for the year 1931 to the figure of £1,077,131, and the report indicates that in accordance with an intention announced before the close of the year to appeal from this decision to the House of Lords a petition of appeal has been lodged. The report outlines negotiations which have taken place between the Assessment Authority and the London Passenger Transport Board in regard to a scheme submitted by the former for the purpose of applying the Railways (Valuation for Rating) Act, 1930, to the Board's undertaking—other than the motor road transport part—in accordance with s. 92 of the London Passenger Transport Act, 1933. Complete agreement has been reached, and a scheme, approved by the Minister with necessary amendments, has been laid before both Houses of Parliament. The first valuation under the scheme is to operate from 6th April, 1936, in London, and from 1st April, 1936, outside London. The report shows that the gross expenditure of the Authority for the year was £38,324, which represents a reduction of about £8,000 on the previous year's expenditure.

Litter.

The Times correspondent writing from Manchester on the 21st August states that the fining of two cyclists 10s. each by the Lancashire County Magistrates for depositing litter on the public highway is welcomed by local authorities in Lancashire as evidence of a disposition on the part of the magistracy to check a growing public nuisance. The prosecution in these cases was initiated by the legal department of the Lancashire County Council, whose solicitor, it is stated, told the magistrates that the council hoped for their support in the endeavour to stop the scattering of litter. Broken glass, paper wrappings and newspapers appear to form the chief items for indiscriminate disposal. The first-named has been the subject of a number of prosecutions in a popular Lancashire resort, but it is intimated by the cleansing director of that locality that the prosecution of offenders generally would take up far too much time and involve too much expense. *The Times* correspondent urges that public opinion should require every decent citizen to take his litter home with him and burn it, and further that the chief instrument for securing abatement of the evil must remain the growth and encouragement of a strong and effective public opinion on the subject. We suggest that a vigorous application of the punitive measures available would be a valuable corrective and that the example provided by the legal department of the Lancashire County Council of bringing to book the perpetrators of this kind of nuisance is one that might well be followed in other quarters.

Finger Prints and Palm Prints.

THE reliability of palm prints as a means of identification was the subject of inquiry by a magistrate in recent proceedings when one under remand was charged with entering a private residence and stealing various articles therefrom. A dispatch-box in the house which had certain marks upon it was taken to Scotland Yard and a portion of a palm print was found near the lock. Enlarged photographs of this and palm prints signed by the defendant revealed sixteen ridge characteristics common to each, and a detective-inspector said that he had no doubt they were of the same person. In answer to a question by the magistrate it was intimated that experience favours the view that the impression of the palm was as reliable as a means of identification as that of the fingers.

Direction Indicators: New Regulations.

THE formulation of regulations designed to standardise the position and form of direction indicators and stop lights fitted to motor vehicles will be welcomed by road users and, probably, motor manufacturers alike. The new regulations which are based, in the main, on the report of the Departmental Committee on Traffic Signs and have been considered in draft by the Traffic Advisory Council, will apply to all direction indicators and stop lights fitted to motor vehicles registered for the first time on 1st January, 1936, or thereafter. They do not render the fitting of the devices obligatory, nor will they apply to existing vehicles. The contents of the regulations have been widely disseminated in the daily Press, but it may be convenient shortly to repeat them here. The maximum height prescribed for indicators, which must be of the semaphore-arm type and so fitted that when not in operation they are not likely to mislead other drivers, is 6 ft. 6 ins. from the ground. Indicators must not be more than 4 ft. behind the base of the windscreen except in the case of pillarless saloons when they must not occupy a position behind the widest part of the body. All indicators must be visible from front and rear of the vehicle and be in such a position that the driver is aware that they are functioning correctly. Illuminated indicators must be amber in colour, while those fitted to vehicles not provided with electric light must be in the form of a hand coloured white. The regulations do not prohibit the employment of additional indicators at the rear of the vehicle to be used in conjunction with front indicators. Stop lights, red or amber in colour, must occupy a position at the back of the vehicle either in the centre or to the right, although duplicate stop lights may be fitted on the left of the vehicle.

Bridges and their Upkeep.

LEGISLATION in regard to bridges began as far back as the statute of 25 Edw. I, c. 15 (1297), which provided that no town or freeman should be distrained to make bridges or banks but such as of old had been accustomed to make them. This was really the statutory way of declaring that liability to repair and maintain bridges of public utility depended upon ancient custom. Later the Statute of Bridges (1530–1) 22 Hen. VIII, c. 5, gave authority to the justices of the peace in every shire or borough to inquire into the cases of broken bridges and to award process against the offenders, and if the persons liable to repair could not be discovered, made the inhabitants of the town or district liable and appointed collectors of rates and surveyors. The same statute also re-affirmed the principle of the common law by declaring that the liability to repair extended to the approaches, i.e., the highway within 300 feet of the ends of the bridge (s. 7).

This statute of Henry VIII is really the foundation upon which all subsequent law relating to bridges was built up until the Bridges Act, 1929, concluded the long series of enactments on the subject by introducing what was necessary to cope with the increasing needs of modern transport. By the common law as re-affirmed in the statute of 1530 liability to repair bridges upon public highways lay upon the county in which it was situated—in contrast to the common law liability of the parish in regard to public highways themselves. As Littledale, J., observed in the oft-cited case of *R.* v. *Inhabitants of Oxfordshire* (1825), 4 B. & C. 194—"a parish as to highways and a county as to bridges are precisely on the same footing." This liability on the part of the county would, however, be rebutted on proof that some other district or body or person was liable either specially in regard to the bridge alone or as being liable for the repair of the highway of which the bridge formed part (see *R.* v. *Norfolk County Council* (1910), 26 T.L.R. 269). The passing of the Local Government Act, 1888, transferred to the county or borough councils the *primâ facie* liability of the district in regard to bridge repair.

Between 1702 when the statute 1 Anne, c. 12, was passed "to explain and alter the Act made in the two and twentieth year of King Henry the Eighth concerning repairing, and amending of Bridges in the Highways . . ." a long series of Acts made amendments in the law which culminated in the Highways and Bridges Act, 1891, which, whilst not touching privately-owned bridges, empowered county councils and other highway authorities to enter into agreements for the construction and improvement of bridges in public highways. The Bridges Act, 1929, extended this principle by enabling highway authorities and the owners of bridges carrying public carriage roads to make agreements with respect to the maintenance, improvement, reconstruction and transfer of such bridges, and of the approaches thereto and the roads carried thereby; and it further gave power to the Minister of Transport, in the absence of any such agreement, to make orders for carrying this into effect. The bridges into which this statute applies are bridges or viaducts by which a public carriage road is carried over any railway, canal, river, creek, watercourse, marsh or other place where water flows or is collected, or any ravine or other depression, not being bridges or viaducts for the maintenance and repair of which a highway is responsible.

Under the Act of 1929 a highway authority (i.e., the county or borough council, as the case may be) may agree with the owner of any such bridge as is mentioned above that they (the highway authority) will contribute to the cost of maintenance, improvement or reconstruction of the bridge and its approaches: alternatively the agreement may provide for the responsibility of maintenance and improvement of the road carried by the bridge; or it may be for the transfer to the highway authority of the property in the bridge and the road carried thereby and the approaches thereto, and of all or any rights and obligations attaching to such bridge, road or approaches (s. 2). If the owner of a bridge or a highway authority considers that the bridge is or may be, by reason of its construction, position or state of repair, dangerous or unsuitable for the requirements of road traffic, as then existing or the anticipated development thereof, or that the responsibility for the maintenance and improvement of the road carried by the bridge or the approaches thereto should for any reason be transferred from the owner to a highway authority, the owner or authority may apply to the Minister for an Order to provide for the reconstruction or improvement or maintenance of the bridge or the road which it carries or the approaches. The Minister must then consult the owner and every highway authority concerned, and if requested so to do must hold an inquiry before making any order appropriate to the question of reconstruction and future ownership and maintenance (s. 3).

All this, of course, is by way of facilitating the construction, repair, and maintenance of bridges without recourse to legal enforcement; and we come back to the strictly legal position as affecting bridges which are not privately owned. The general rule is as stated above, that in a county the liability to repair all "county bridges" rests *primâ facie* upon the county council. As to what is meant by a "county bridge," it was laid down by Bovill, C.J. in *R.* v. *Chart and Longbridge Inhabitants* (1870), 34 J.P. 454, that the expression was merely a compendious way of speaking of a public bridge which the county was liable to repair. That, carried a little further, is another way of saying that the inhabitants of a county are bound to repair every public bridge within the county unless they can fix the responsibility upon some other body or person: see *R.* v. *Bucks Inhabitants* (1810), 104 E.R. 76, which concerned a bridge over the Thames at Datchet built by Queen Anne to take the place of an ancient ferry with a toll belonging to the Crown. She and her successors maintained and repaired it until 1796, when it collapsed. It was held that the bridge was a public bridge which the inhabitants were bound to rebuild and repair. Similarly, in the same year it was held by Lord Ellenborough, in *R.* v. *Salop Inhabitants*, 104 E.R. 303, that all public bridges are *primâ facie* repairable by the inhabitants of the county without distinction of foot, horse or carriage-way.

In *R.* v. *Wiltshire Inhabitants* (1704), 87 E.R. 1046, it had been held that if a private person builds a private bridge which afterwards becomes a public convenience, the county is bound to repair it. This was one of the precedents for the decision rather more than a century later in the case of Queen Anne's bridge at Datchet, which had in fact been built in 1708. In 1903 in *Attorney-General and Doncaster R.D.C.* v. *West Riding County Council*, 67 J.P. 173, it was held that where a bridge has been built over a public highway prior to the Bridges Act, 1803, the county council can only escape their common law liability to repair by shifting the onus on to some other body or person. This statute (43 Geo. III, c. 59) sets out in its preamble that "whereas the inhabitants of counties in 'that part of the United Kingdom called England' are by law bound to repair, support, and maintain the publick bridges, commonly called county bridges, within such counties respectively, and the roads at each of the ends thereof for limited distances; but the laws empowering them so to do are insufficient and defective and doubts have arisen how far the said inhabitants are liable to improve such bridges when they are not sufficiently commodious for the publick, the surveyors of county bridges should have the right to get materials for the repair of bridges in the same manner as for the repair of turnpike roads, viz., as provided under the Highway Act, 1773 (13 Geo. III, c. 78)." That statute was repealed by the Highway Act, 1835, but its provisions are still operative so far as bridges are concerned, because they were thus incorporated in the Bridges Act, 1803 (see *R.* v.

County of Brecon (1849), 15 Q.B. 813). Those sections are 6-14, 16, 18, 27-33, 59 and 72-81. By the Statute Law Revision Act, 1890, the Bridges Act, 1803 was itself repealed, except in so far as it extended any provision of the 1773 Act except the sections named. The Highway Act, 1835 gave special powers to highway surveyors for getting materials for the repair of highways and these by s. 22 are extended to county bridges and roads at their ends.

It will thus be seen that when any problem relating to bridges and their repair arises, the thing to do is to look first of all at the Bridges Act, 1929 (19 & 20 Geo. 5, c. 33), which provides for all modern administrative arrangements. It is a short Statute, but its provisions are very clearly set out; armed with this and carrying in mind the general details set out above, it should be possible to arrive without much trouble at the legal position in regard to any difficulty arising. There is of course a superfluity of case law on the subject of bridges, and their upkeep, much of which, however, will be found to be obsolete. It is to be hoped that in the not very distant future when the law relating to highways comes up for consolidation, a separate consolidated Statute may also be provided dealing with bridges. Such a Statute with clear references necessary to the points of contact with highway law so as to make reference easy would be of very great benefit to the legal profession and all concerned.

Privilege and Reports of Court Proceedings.

THE fascination which courts of justice exercise over the minds of the lay public is frequently reflected in exuberant and highly coloured accounts of proceedings in the courts. Some newspapers make a regular feature of police court news, written in a racy and popular style, and no doubt many of the unfortunates whose frailties are publicly exhibited in those courts must feel hurt when they see their frailties served up with an appetising journalistic sauce to make a few minutes' entertainment for the readers of those newspapers.

However attractive the style of the journalist, if the matter contains nothing but what is a fair and accurate account of judicial proceedings, it has been held to have been written on as privileged an occasion as the judicial proceeding itself. "It is now well established," said Cockburn, C.J., in *Wason* v. *Walter*, L.R. 4, Q.B. 73, 87, "that faithful and fair reports of the proceedings of Courts of Justice, though the character of individuals may incidentally suffer, are privileged, and that for the publication of such reports the publishers are neither civilly nor criminally responsible." And Wilde, B., in *Popham* v. *Pickburn*, 31 L.J. (Ex.) 133, 136, said that such reports "only extend that publicity which is so important a feature in the administration of the law of England, and thus enable to be witnesses of it, not only the few that the court can hold, but the thousands who can read the reports."

Even the fullest reports must omit something, and it is in knowing how much and what to omit that the skill of the journalist lies. It might, for example, be considered unfair to report only the judgment in the case if that judgment did not give a complete and substantially accurate account of the matters on which the judge is adjudicating. Lord Halsbury, L.C., said in *Macdougall* v. *Knight*, 14 A.C. 194, 200: "I am not prepared to admit that the judgment of a learned judge must necessarily be privileged. It is obvious that a partial account of what takes place in a court of justice may be the exact reverse of putting the person to whom publication is made in the same position as if he were present himself. If the evidence of a witness containing matter defamatory of an individual were published, and the cross-examination which showed the witness to be a person to be unworthy of belief were suppressed, it would obviously be a partial and inaccurate account of what took place. Nor do I think there is any presumption one way or the other as to whether a judge's judgment does or does not give such a complete and substantially accurate account of the matters on which he is adjudicating as to bring it within the privilege."

These were *obiter dicta*, and it should be pointed out that the Court of Appeal in *Macdougall* v. *Knight*, 17 Q.B.D. 636, held that a verbatim judgment was privileged and subsequently upheld their judgment in *Macdougall* v. *Knight* (1890), 25 Q.B.D. 1.

It is certainly not sufficient to publish counsel's opening, and if it is not supported by the evidence, it is unfair and inaccurate to report it without adding that the evidence does not bear it out (*Ashmore* v. *Borthwick* (1885), 49 J.P. 92). On the other hand, "the fact that the report only published the summing up and the speech of the prosecuting counsel, and omitted the evidence, does not show that the report was unfair; it would clearly be impossible to report trials if that were so. It is sufficient to publish a fair abstract. I do not see that the reporter is to be blamed if he takes the judge's abstract instead of one of his own": Mellish, L.J., in *Milissich* v. *Lloyds*, 46 L.J., C.P. 404.

Moreover, the same standard of accuracy and fairness must not be demanded of a newspaper reporter as from a professional law reporter. In *Hope* v. *Leng*, 23 T.L.R. 243, 244, Collins, M.R., said: "The learned judge, in language I would not attempt to improve on, and in which I entirely concur, put before the jury the position of a reporter for a daily newspaper whose function it was to send a report in order that the public might read it the next day . . . . the learned judge said: 'I think juries would be very wrong if they were to be too severe on them'—i.e. reporters—'if there happens to be some slight flaw, if there is something which they think might have been better put in a different way.'" But if there is any substantial inaccuracy, no privilege attaches to the report (*Gwynn* v. *South Eastern Railway Co.* (1868), 18 L.T. (N.S.) 738).

It is in the more imaginative efforts of reporters with a roving commission over the various courts that errors of law as well as of good taste are to be found. The interjection of comment and description is clearly not privileged in itself. It has been held to be an unfair report of proceedings before a magistrate which, assuming the truth of the depositions, states: "He is likely to meet the legal punishment of his villainy" (*R.* v. *Fisher and Others* (1811), 2 Camp. 563); such headlines as "Shameful conduct of an attorney" (*Lewis* v. *Clement* (1820), 2 B. and Ald. 702) and "How lawyer Bishop treats his clients" (*Bishop* v. *Latimer* (1861), 4 L.T. (N.S.) 775), have been held to be unfair comment under the circumstances of these cases. It is always in the interests of a reporter to keep any comment that he may have to make separate from his report. Lord Campbell, C.J., said in *Lewis* v. *Levy*, E. B. and E. 537: "Where the report of law proceedings has mixed up with it commentaries reflecting on any of the parties whose names appear in it, it entirely loses the privilege which it might otherwise claim." The general position was put very clearly by Cockburn, C.J., in summing up to the jury in *Woodgate* v. *Ridout*, 4 F. & F. 202, a case turning on an article the general style of which may be guessed from its opening sentence: "Reality and fiction tread upon each other's heels." He said: "On the one hand let it not be supposed that the law imposes any undue restraint upon the freest and fullest comment on all that passes in public courts of justice; for that the administration of justice should be made a subject for the exercise of public discussion is a matter of the most essential importance. But on the other hand, it behoves those who pass judgment on those who are suitors or witnesses in courts of justice not to give reckless vent to harsh and uncharitable views of the conduct of others, but to remember that they are

bound to exercise an honest and an impartial judgment upon those whom they hold up to public obloquy."

Fletcher Moulton, L.J., explained the reason for separating fact from comment in *Hunt* v. *Star Newspaper Company Limited* [1908] 2 K.B. 309; 52 SOL. J. 376. He said: "If the facts are stated separately and the comment appears as an inference drawn from those facts, any injustice that it might do will be to some extent negatived by the reader seeing the grounds upon which the unfavourable inference is based. But if fact and comment be intermingled so that it is not reasonably clear what portion purports to be inference, he will naturally suppose that the injurious statements are based on adequate grounds known to the writer though not necessarily set out by him."

It is a question of fact for the jury, not a question of law for the judge, whether a given report is a fair report of judicial proceedings—*Turner* v. *Sullivan* (1862), 6 L.T. 130; and it is also for the jury to say "whether a given comment upon proceedings of a court of justice is a fair comment upon them or the result of them or not" (per Cockburn, C.J., in *Woodgate* v. *Ridout* (1865), 4 F. & F. 202). In a recent High Court action against the publishers of a daily police court report headed "The Seamy Side," the parties elected to accept a majority verdict of the jury; a verdict was returned for the defendant and judgment was entered accordingly (*Pierce* v. *Associated Newspapers Limited, The Times*, 6th July). It thus frequently happens that regular readers of the report in question in the proceedings are called upon to adjudicate as to whether persons mentioned in the report have been brought into hatred, ridicule or contempt. Undoubtedly no better tribunal could be devised to decide upon the effect of an article than representatives of those persons by whom it is calculated that the effect should be felt.

The Sufficiency of Statutory Notices.

A PROBLEM which often reappears is whether a substantial compliance with a statutory form is sufficient, or whether a rigid adherence thereto is essential. In *Druce & Co. Limited* v. *Beaumont Property Trust Limited* (1935), 79 SOL. J. 435, the plaintiffs let certain furniture under hire-purchase agreements, to the tenant of two flats, owned by the defendants. The tenant's rent fell into arrear, and the defendants, having distrained upon the furniture, were served by the plaintiffs with notices under the Law of Distress Amendment Act, 1908. These notices declared that the tenant had no right or beneficial interest in the furniture, which was the plaintiffs' property. There was no additional statement that the furniture was "not goods or live stock to which this Act is expressed not to apply," as required by s. 1. The defendants therefore ignored the notices, and sold the goods, whereupon they were sued for damages for conversion. The plaintiffs relied upon s. 2, whereby a landlord who proceeds with a distress after receipt of such a declaration shall be deemed guilty of an illegal distress. Their case was that the court should look into the facts, and should not require notice to be given to the landlord of facts which he already knew. The defendants were well aware that the premises were residential, and it would have been mere surplusage to point out that the goods were not in an office, warehouse or place of business. The defendants contended that the mere fact of the goods being the plaintiffs' property did not imply that they were also protected by the Act. For example, they might nevertheless be in the tenants' order and disposition, and therefore subject to seizure under a distress for rent. The logical conclusion of the plaintiffs' argument would be that no notice at all would be necessary, if it could be shown *aliunde* that the goods were protected. Mr. Justice Horridge held that strict compliance with the section was necessary, and judgment was therefore given for the defendants, with costs.

The circumstances were held not to be analogous to those in *Rugby School Governors* v. *Tannahill* [1935] 1 K.B. 87. A notice had there been served under the Law of Property Act, 1925, s. 146, which imposes restrictions on and relief against forfeiture of leases, and stipulates that the tenant must be required to remedy the breach, and must be informed of the amount of compensation required. The notice in question was silent on both points, but Mr. Justice MacKinnon held that this was immaterial, and gave judgment for the plaintiffs under Ord. XIV, r. 8 (*b*). This decision was upheld by the Court of Appeal (Lords Justices Greer and Maugham) on the ground that the breach complained of (viz., using the premises as a brothel) was incapable of remedy, as a negative covenant had been broken. It was therefore unnecessary to demand a remedy in the notice, and the failure to demand compensation had already been held not to invalidate such a notice in *Lock* v. *Pearce* [1893] 2 Ch. 271.

The reason for requiring strict compliance with the Law of Distress Amendment Act, 1908, was first explained in *Hackney Furnishing Co. Ltd.* v. *Watts* [1912] 3 K.B. 225. The plaintiffs had let goods to a tenant under a hire-purchase agreement, which they afterwards purported to terminate. The defendant nevertheless distrained, and the plaintiffs claimed damages for detention, their case being that the bailment had terminated, whereupon they were entitled to re-possession of the goods. The defence was that the agreement gave the plaintiffs no power to terminate, and the goods—being still under a hire-purchase agreement—were not exempt from distress. The deputy county court judge at Brentford gave judgment for the defendants, and his decision was upheld by the Divisional Court—Mr. Justice Phillimore (as he then was) and Mr. Justice Bray. It was pointed out that the statute is one depriving the landlord of a part of his common law right to distrain, and the words must not be strained so as further to restrict his rights. The owner had voluntarily and for his own gain placed the goods where they could be distrained, and thereby tended to induce the landlord to give credit to the tenant. The latter, presumably, had a substantial interest in the goods, which ought to be available to the landlord.

It is noteworthy that, after twenty-three years, there appears to be no change in the attitude of the law as regards the respective rights of hire-purchase firms and landlords.

Company Law and Practice.

The Essentials of an Amalgamation.

THE recent case of *In re Walker's Settlement; Corporation of the Royal Exchange Assurance* v. *Walker* [1935] 1 Ch. 567, raises once again the question of the word "amalgamation" and its meaning, and affords an interesting angle from which to consider the point.

That the word "amalgamation" has no definite legal meaning is well known; and as Sir W. Page Wood, V.-C., observed in *In re Empire Assurance Corporation; ex parte Bagshaw* (1867), L.R. 4 Eq. 341, at p. 347: "It is difficult to say what the word 'amalgamate' means. I confess at this moment I have not the least conception of what the full legal effect of the word is. We do not find it in any law dictionary, or expounded by any competent authority." And in *New Zealand Gold Extraction Company (Newbery-Vautin Process) Limited* v. *Peacock* [1894] 1 Q.B. 622, Davey, L.J., said that he did not know whether an amalgamation must not be a joining of two companies so as to form a third entity; while Lindley, M.R., expressed himself thus in *Wall* v. *London and Northern Assets Corporation* [1898] 2 Ch. 469, at p. 478: "No very precise meaning can be given to the word 'amalgamate' when we talk about amalgamating a company with any persons, companies or firms, and I confess that I am not prepared to put any sharp definition upon the word." In his view it included the case

put by Davey, L.J., which I have just quoted, and he went on to say: "I do not think it involves the formation of a new company to carry on the business of an old company. I have no doubt it includes that; but I do not think it is confined, or understood to be confined, to that. I do not see how a company as a business transaction can practically amalgamate with persons or companies carrying on business unless the company in some way or other sells its assets as a whole—not for money, for that would be a simple sale—but for shares in the purchasing company."

But perhaps the most satisfactory attempted definition—and one which was followed by Eve, J., and the Court of Appeal in *In re Walker's Settlement*, *supra*—is that contained in *In re South African Supply and Cold Storage Company; Wild* v. *The Company* [1904] 2 Ch. 268, and given by Buckley, J., on p. 287. He was considering whether certain things had been done for the purpose of "reconstruction or amalgamation," and, having given his opinion that a reconstruction takes place when substantially the same persons carry on the same business, he continued in these words: "An amalgamation involves, I think, a different idea. There you must have the rolling, somehow or other, of two concerns into one. You must weld two things together and arrive at an amalgam—a blending of two undertakings. It does not necessarily follow that the whole of the two undertakings should pass—substantially they must pass—nor need all the corporators be parties, although substantially all must be parties. The difference between reconstruction and amalgamation is that in the latter is involved the blending of two concerns one with the other, but not merely the continuance of one concern. An amalgamation may take place, it seems to me, either by the transfer of undertakings A and B to a new corporation, C, or by the continuance of A and B upon terms that the shareholders of A shall become shareholders in B. It is not necessary that you should have a new company. You may have a continuance of one of the two companies upon the terms that the undertaking of both corporations shall substantially be merged in one corporation only."

It will be observed that the first of these two methods of amalgamation mentioned by Buckley, J., is that referred to by Davey, L.J., in the *New Zealand Gold Extraction Company Case*, *supra*; while both these methods were considered and expounded by Romer, L.J., in *In re Walker's Settlement*, *supra*, at p. 583.

Now the point in *In re Walker's Settlement* was whether the scheme in question was, or was not, an amalgamation within the Trustee Act, 1925, s. 10, sub-s. (3). By that section, "where any securities of a company are subject to a trust, the trustees may concur in any scheme or arrangement (*a*) for the reconstruction of the company; (*b*) for the sale of all or any part of the property and undertaking of the company to another company; (*c*) *for the amalgamation of the company with another company*; (*d*) for the release, modification or variation of any rights, privileges or liabilities attached to the securities or any of them; in like manner as if they were entitled to such securities beneficially, with power to accept any securities of any denomination or description of the reconstructed or purchasing or new company in lieu of or in exchange for all or any of the first-mentioned securities . . ."

The facts were shortly these: A scheme of arrangement was promoted by the directors of six electric lighting companies serving different London areas, under which their capital, or at least 90 per cent. thereof, was to be acquired by a holding company, which would issue shares at par value to the stockholders in exchange for their holdings. The objects of the holding company were to control the policy of the constituent companies, to effect economies in administration, and to carry on other business which might advantageously be combined with that of the constituent companies, but which was beyond their powers. The scheme was endorsed "Holding Company's Scheme of Merger," but no transfer of the undertakings of the constituent companies to the holding company was either effected or intended, though, it is true, the pooling of profits was suggested as a future possibility. Further details of the scheme are beyond the scope of this article, so that I must refer my readers to the report, where they will be found.

In these circumstances, the plaintiffs, who held, as trustees, some ordinary stock of one of the constituent companies, approved and desired to concur in the scheme; but, since they were doubtful whether their concurrence would be proper and as the beneficiaries were not unanimous, the trustees took out the present summons to have it determined whether it was an "amalgamation of the company with another company," in which they were authorised to concur by the Trustee Act, 1925, s. 10, sub-s. (3).

Eve, J., held (and his decision was confirmed by the Court of Appeal) that the scheme was not an amalgamation within s. 10, sub-s. (3) (*c*), in which the trustees were authorised to concur. He observed, on p. 573, that the acquisition by the holding company of a sufficient number of shares in each of the six companies to give the purchasing company the control of each company did not involve the conclusion of any bargain by the six companies to bring into a combination their several undertakings and assets or to sink the individuality of each company in a joint adventure. In other words, such an acquisition was not enough to constitute an amalgamation. The paragraph in the scheme which dealt with the pooling of profits appeared to him to be the only paragraph in which anything like an amalgamation was adumbrated, but even that was only a suggestion of something that might be done in the future and had no present application. He saw nothing in the scheme which connoted such a blending together in whole or in part of two or more separate undertakings as to amalgamate or fuse them into one. Having pointed out that the courts had held that no very precise meaning can be given to the words "amalgamate" or "amalgamation," that neither word has any definite legal meaning, that they are commercial and not legal terms, and even as commercial terms have no exact definite meaning (*In re South African Supply and Cold Storage Company*, *supra*), he observed that Buckley, J., in that case had expressed the opinion that an amalgamation must involve certain characteristics, and upon that judgment no subsequent authority had cast any doubt. Eve, J., for these reasons, thought he was entitled to assume that the Legislature, when conferring upon trustees this important power to concur in a scheme for the amalgamation of one company with another, must have contemplated an amalgamation embodying the characteristics enumerated by Buckley, J. (which I have set out above), and that the present scheme did not involve those essential characteristics.

In the Court of Appeal, Maugham, L.J., prefaced his judgment by observing that the Trustee Act, 1925, is now ten years old, and that, while one cannot, strictly speaking, construe s. 10, sub-s. (3) (*c*), by reference to anything in the Finance Act, 1927, or in the Companies Act, 1929, yet one may fairly look to see how the Legislature does use the word "amalgamation," even in a later Act than the Trustee Act of 1925. In his opinion, it was correct to say (as Eve, J., had said in effect) that in 1925 "amalgamation" had, generally speaking, the meaning which is to be found in Buckley on the "Companies Act, 1929," 11th ed., p. 487; that is to say, "it contemplates a state of things under which two companies are so joined as to form a third entity, or one company is absorbed into and blended with another company." On the facts, he took the view that there was no possibility of saying accurately that there was a blending of any undertakings at all. "What may be described as amalgamated or blended are the interests of the shareholders in the various concerns; in other words, I think, without gross inaccuracy, that this might be described as an amalgamation *quoad* the interests of the shareholders": [1935] 1 Ch., at p. 587. Romer, L.J., observed, on p. 583: "It is quite obvious . . . that as the result of that scheme there will not

in future be one corporation instead of six corporations; there will not be one undertaking instead of six undertakings; there will not be one set of shareholders instead of six sets of shareholders, because each company will continue to carry on its business in its own name, and the shareholders in the six companies will now be different indeed frrom the shareholders previously existing, but they will be shareholders of six separate companies. There will not be a blending together of all the shareholders in the six companies."

And as he pointed out on p. 585, the purchase by one company of all the shares in another company with which it is proposed to amalgamate does not, by itself, result in an amalgamation. The purchase may be a step towards amalgamation which is brought about eventually by the liquidation of the selling company by the purchasing company, and by the acquisition by the latter of the former's undertaking. That would result in an amalgamation of the two corporations of the two undertakings and of the two sets of shareholders—a view which he thought was borne out by the wording of the Finance Act, 1927, s. 55.

In conclusion, I think the effect of this decision may be summarised by saying that a transaction which consists solely of the acquisition by a holding company of shares carrying the controlling interest in another company would not, by itself, involve an amalgamation of those two companies; though one must not lose sight of the words on p. 580 of the Master of the Rolls—"I think that one will be able to identify an amalgamation when one sees it, but I hesitate to offer any suggestions of finality as to the interpretation of the word."

A Conveyancer's Diary.

Protected Life Interests. Effect of Order to Raise Capital under s. 57 of the T.A., 1925.

An interesting case on the effect of s. 57 of the T.A., 1925, in relation to a possible forfeiture under the provisions of a protective trust, is *Re Mair, Richards* v. *Doxat* [1935] 1 Ch. 562.

By his will, dated in 1901, a testator, after appointing trustees and making certain dispositions, gave all his residuary real and personal estate upon trust for sale or conversion and investment, and his trustees were to stand possessed of the trust premises upon trust to pay one-third of the income to each of them his wife, E.C.D., and his daughter, M.C.R., "during her life unless and until some event shall have happened or shall happen whereby if the same income belonged absolutely to her she would be deprived of the personal enjoyment thereof or any part thereof." In that event the income was directed to be held upon a discretionary trust (in the events which had happened) for the two ladies and their husbands, and subject thereto the two ladies together were absolutely entitled.

The plaintiff, E.C.D., had incurred considerable debts and desired that the trustees should raise a sufficient sum out of the capital to discharge them. The defendant was willing that that should be done, provided that a similar amount was raised and paid to her.

A scheme on these lines was prepared for the sanction of the court under s. 57 of the T.A., 1925. The present summons, however, was to have it decided, as a preliminary point, whether, if the scheme was sanctioned, forfeiture of the life interests of the plaintiff and defendant would be incurred.

Section 57 is a very wide one—

> "Where in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure or other transaction, is in the opinion of the court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the court may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on such terms and subject to such provisions and conditions, if any, as the court may think fit, and may direct in what manner any money authorised to be expended and the costs of any transaction are to be paid or borne as between capital and income."

It is also provided in sub-ss. (2) and (3) that the court may from time to time rescind or vary any order made under the section, and that an application to the court under the section may be made by the trustees or any of them or by any person beneficially interested under the trust.

It is manifest that, if the court in its discretion thought it expedient so to do, it could under that enactment confer on the trustees power to raise the moneys contemplated by the scheme. It is also plain that if the scheme were carried into effect the income of the trust funds would be depleted to the extent of the income yielded by the sums raised, and that an event would have happened whereby the life tenants would be deprived of the income of part of those funds. Notwithstanding that, the question was whether the forfeiture clause would be brought into operation if the scheme were carried out.

Farwell, J., came to the conclusion that it would not. The learned judge considered that if and when the court sanctioned an arrangement or transaction under s. 57, it must be taken to have done it as though the power which was being conferred by the court had been inserted in the trust instrument as an overriding power. His lordship said: "One may take this case. If one of the trustees had been given an overriding power to raise capital funds out of the residuary estate for the benefit of either of these two ladies, it could not be suggested that the exercise of that power would have brought this clause into operation. The true effect of the two clauses combined would have been that the forfeiture clause would only have operated on so much of the income as was from time to time payable to the ladies under the trust, and the exercise of the power, although it would have resulted in reducing the income, would not have had the effect of bringing into operation the forfeiture clause, but would have left the forfeiture clause to operate on so much of the income as was still payable. . . . If there is a proper exercise of an overriding power, whether it be in the instrument itself or by virtue of s. 57, the exercise of that power does not bring into operation the forfeiture clause."

There is one earlier case on s. 57 which should be noticed. The order asked for in that case was, however, somewhat different from that sought in *Re Mair*.

A testatrix bequeathed a legacy to trustees upon trusts to pay the income to the plaintiff until he should assign, charge or otherwise execute, do or suffer some deed, act or thing voluntary or involuntary (other than giving his consent to the exercise of a power of advancement in favour of his children in the will contained) "whereby the income or some part thereof would, if belonging absolutely to him, become payable to some other person or a corporation," or until his death. There was a discretionary trust to take effect upon the cesser of the life interest during the lifetime of the plaintiff. The plaintiff applied to the court under the powers of s. 57 for an order authorising the trustees to raise £15,000 out of the capital of the settled legacy, and to apply the same in payment of his debts generally for his benefit.

An order was made authorising the trustees to raise the money and apply it accordingly, upon the terms that the tenant for life should effect a policy for £15,000 upon his own life and assign the same to the trustees to secure repayment of the capital raised, and that the trustees should pay the premiums on the policy out of the income unless the tenant for life should within seven days of each renewal date produce

to them a receipt for the amount of the premium paid to the insurance company.

The question was whether, by applying for and obtaining that order, the tenant for life had forfeited his life interest.

It was conceded that no forfeiture arose under that part of the order which authorised the payment of the capital moneys to or for the benefit of the plaintiff, so that the point raised in *Re Mair* was not argued. On that point Eve, J., said: "It is true, of course, that he" (the tenant for life) "will cease to enjoy the income of so much of the capital as is expended in this way, but to what other person would it have become payable had it belonged to him absolutely? The tenant for life by borrowing the money and paying it away to his creditors does not make the income payable to anyone else; his action did not amount to an alienation of the income."

His lordship considered that point to be concluded by the judgment in *Re Brewers Settlement* [1896] 2 Ch. 503, where Chitty, J., put the tenant for life's position in similar circumstances, as follows: "I think that it would be an extravagant refinement to say that every sovereign as he paid it away still remained part of the trust fund and was producing an income, and such income was payable to . . . the persons who had received the sovereign or other money thus paid away."

It was said, however (in *Re Salting*), that a forfeiture was brought about by that part of the order which authorised the trustees to keep down the premiums on the policy if the tenant for life failed to produce receipts therefor within seven days after the renewal dates.

Eve, J., did not take that view. His lordship considered that in construing an order made under s. 57 he must apply the same rules as would have been applicable if the transaction had been the subject-matter of a binding agreement outside s. 57 altogether. Merely by obtaining the order, the life interest of the tenant for life was not affected. The tenant for life might be temporarily deprived of the enjoyment of part of the income, but he did not thereby do any act whereby any part of the income became payable to any other person or corporation. In fact, it could hardly be said in that case that he deprived himself of any part of the income so long as he paid the premiums. He would receive the whole income and dispose of part of it in payment of the premiums, but so long as he did in fact keep down the premiums no part of the income would be payable to any other person. The learned judge on this point said: "It is true that if he" (the tenant for life) "neglects to do something more, that is to say, to pay the future premiums and to produce the receipts within the seven days, he will have suffered—voluntarily or involuntarily—something by which the income will actually become payable to others, and in that event a forfeiture will, in my opinion, be incurred; but so long as he pays the premiums and the trustees are not called upon to apply any part of the settled income in so doing, I do not think his life interest will be affected."

His lordship added that it would be incumbent on the trustees each year, in anticipation of the date on which the renewal premium became payable, to retain in hand a sufficient part of the trust income to pay such premium and not to pay the same to the tenant for life until the premium had been paid.

These cases together will be a useful guide in determining questions as to forfeiture arising as a consequence of orders under s. 57, although no doubt cases will occur when the circumstances are different and not covered by those decisions, but the principles to be applied are well stated in the judgments which will resolve the question in most instances.

The twentieth annual issue of Tolley's income-tax chart, with Irish Free State supplement, has recently been published by Messrs. Waterlow & Sons, price 4s. The chart incorporates the alterations made by the Finance Act, 1935, reported legal decisions, and changes in the official practice up to June last.

Landlord and Tenant Notebook.

Agreement not to give Notice to Quit.

Landlords granting what appear to be periodic tenancies have been known to commit themselves not to give their tenants notice to quit as long as certain conditions obtain. The question may then arise, or may later arise, whether such promises are unenforceable, either on the ground of repugnancy or on the ground of absence of form. The authorities bearing on the question require careful study; in particular regard must be paid to the state of legislation in force at the time.

The possibilities latent in the position can be seen by perusing the reports of *Doe d. Warner* v. *Browne* (1807), 8 Ea. 165, and *Browne* v. *Warner* (1807), 14 Ves. 156, 409, in which, as the reader may have guessed, Browne, having been defeated in a court of law, resorted to equity. In the first proceeding, it appeared that Warner had purported to let him some premises by means of a document not under seal by which W had promised not to raise the rent nor turn B out as long as he paid rent and did not sell or expose for sale any article which would injure W in his business; that the rent mentioned in the document was £40 a year; and that the document also showed that B had paid a premium of £40, which he was to be at liberty to obtain from the next tenant if he moved. W, having given a six months' notice, took proceedings in ejectment. It was held that B was in this dilemma: if the agreement was for a lease for his life, it was void because it was not under seal; if there were no definite period, the term must be year to year, and the agreement not to turn out was void for repugnancy. Lord Ellenborough having so decided, B filed a bill claiming specific performance in Lord Eldon's court. Unfortunately the report is limited to the application for and an application to resolve an injunction against W; possibly the matter was ultimately settled out of court. At all events, the learned Chancellor was much impressed by that part of the agreement which entitled B to the £40 on leaving; this was evidence of intention on the strength of which B could obtain a decree either for the return of the £40 paid on entry, or for a lease.

In *Wood* v. *Beard* (1876), 2 Ex. D. 30, the same law applied; for while the Real Property Act, 1834, had been passed in the meantime, the agreement relied upon by the tenant provided for a rent less than two-thirds of the rack rent, so that the absence of a seal still made it impossible for the grant, if any, to be considered a lease for life. The document was more elaborate than that before the court in *Browne* v. *Warner*, but the agreement to let the defendant remain as tenant so long as he kept his rent paid was qualified by "and as long as the Plaintiff has power to let," so that there was also the objection of uncertainty. And *Browne* v. *Warner* was distinguished on the ground that in that case the agreement as to the £40 on change of tenancy made a lease necessary in order to give effect to the agreement between the parties. *Cheshire Lines Committee* v. *Lewis & Co.* (1880), 50 L.J., Q.B. 121, C.A., was a case of a weekly tenancy negotiated and signed by the plaintiff's agent, who at the same time wrote: "You may have the premises as per agreement until the railway company require to pull them down." The company gave notice to quit because it wanted the building for its own occupation. On the authority of *Browne* v. *Warner*, the agreement evidenced by the letter was held to be repugnant to that contained in the tenancy agreement. It should be noted that the latter was construed as an actual demise.

But the modern law and attitude are best to be seen in *Zimbler* v. *Abrahams* [1903] 1 K.B. 577, C.A. Here it appeared that the landlord's agent had written an ungrammatical letter in these terms: "I have let . . . at a weekly rental of . . . and I agree not to raise Mr. Abrahams any rent as long as he lives in the house and pays rent regular. I shall not give him notice to quit. Any time Mr. Abrahams wishes to move

out, I promise to return him the £6 he has paid on taking possession." In an action for possession on the determination of a notice to quit given by the landlord, there was no counterclaim for specific performance, but it was held that the letter, though it could not effect an actual demise, was a perfectly valid agreement for a lease for life subject to two conditions. And the defendant was, in the end, given fourteen days in which to apply for specific performance. This despite the "I have let," so that the present position appears to be that any such tenancy agreement including a landlord's promise not to determine it will be treated as an agreement for a lease for the tenant's life unless there is, in the document itself, to be found some reason to the contrary.

Our County Court Letter.

THE AGRICULTURAL HOLDINGS ACT, 1923.

In the recent case of *Breese* v. *Dugdale*, at Warwick County Court, a case had been stated on the questions (1) whether the applicant (the tenant) was entitled to impose a time limit, viz., fourteen days, for the landlord to accept or refuse arbitration for rent; (2) if so, whether the period ran from the date of the delivery of the demand or the date of its receipt; (3) whether a counterclaim, served upon the tenant's agent and valuer (and not upon the tenant personally) complied with s. 16 (2) of the above Act. The evidence was that a demand was placed in the letter box at the office of the landlord's agent at 4 p.m. on the 10th March, 1935—a Saturday. Not having received any acceptance of arbitration by the 24th March, the tenant served a notice to quit, also on a Saturday afternoon. The landlord's case was that, not having received the demand until the 12th March, he replied promptly on the 13th March, viz., that he would give the matter attention within fourteen days. He then posted a letter before midnight on the 24th March, accepting arbitration, but it did not reach the tenant until the 26th March. His Honour Judge Drucquer held that the tenant was entitled to specify a time limit, but, if the landlord replied within the period, the tenant could not then contend that there had been no compliance within a reasonable time. The tenant must specify a reasonable period, otherwise the landlord (and the arbitrator) could ignore it. For example, a period of four days would be too short, and, if the landlord replied in ten or fourteen days, he would still have done so in a reasonable time. The tenant was not entitled to deliver a notice at a time when a professional office would normally be closed, and the above demand only ran from the 12th March—the Monday upon which it was received. The acceptance was therefore reasonably given, although not received until the 26th March, in due course of post. There was nothing in s. 16 (2) to require personal service of a counterclaim on a tenant, and the universal custom, since 1923, had been to serve notice upon his valuer. All the questions were therefore answered in the affirmative, costs being allowed to the landlord, the respondent.

THE REGISTRATION OF DE-CONTROLLED HOUSES

In the recent case of *In re Self* at Ipswich County Court, an application was made for an excuse certificate, under the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, s. 2 (2). On the 13th July, 1928, the applicant had purchased a house, in which he had lived for a year. The house was de-controlled, under the old legislation, and it was let to a tenant for 13s. 6d. a week from 1929 until March, 1934. The house was then vacant for a week or two, after which it was let to the present tenant for 14s. 6d. a week. In June, 1935, the tenant discovered that the house was not registered, and he had suspended payment of rent (which he considered was too high) pending the result of the application. As the application was *ex parte*, the tenant had no *locus standi*, but he was legally represented and no objection was taken to the cross-examination of the applicant, viz., as to his knowledge of the need for registration. His Honour Judge Hildesley, K.C., was satisfied that the applicant had been ignorant of the law, and that there was no hardship upon the tenant. A certificate of reasonable excuse was therefore granted.

INVALID HIRE-PURCHASE AGREEMENT.

In *Bowmakers, Ltd.* v. *Griffiths*, recently heard at Newport (Mon.) County Court, the claim was for £45 12s. The plaintiffs' case was that in January, 1934, the defendant had agreed to repay £185 12s. under a hire-purchase agreement of a motor van. The vehicle was subsequently found to be too small, and was sold by the plaintiffs (at the defendant's request) for £140. The defendant contended that the forms had been filled in fraudulently, as he had signed in blank (in November, 1933) when he was negotiating for the purchase of the vehicle, for which he subsequently paid cash. His Honour Judge Thomas gave judgment for the defendant, with costs.

Obituary.

MR. JUSTICE GARDINER.

The Hon. Mr. Justice Frederick George Gardiner, K.C., Judge President of the Cape Provincial Division of the Supreme Court, died at Cape Town on Thursday, 22nd August, in his sixty-second year. He was educated at the University of the Cape of Good Hope and at Keble College, Oxford, and was called to the Bar by the Middle Temple in 1896. He was admitted Advocate at the Cape in 1897. From 1910 to 1914 he was Attorney-General of the Cape Province, taking silk in 1912. He was appointed to the Cape Bench in 1914, and in 1926 he became Judge President of the Cape Provincial Division of the Supreme Court.

MR. R. H. BALLOCH.

Mr. Robert Hugh Balloch, Bencher of the Inner Temple, of King's Bench Walk, Temple, died there on Saturday, 24th August, at the age of seventy-two. Mr. Balloch was called to the Bar by the Inner Temple in 1889.

MR. F. H. A. BELL.

Mr. Francis Henry Augustus Bell, solicitor, of Queen Street, E.C., died recently while on holiday in Norway. Mr. Bell, who was admitted a solicitor in 1886, was a partner in the firm of Messrs. Scott, Bell & Co.

MR. W. C. E. BRIGNALL.

Mr. William Charles Edgar Brignall, solicitor, of Stevenage, Herts, died at St. Bartholomew's Hospital on Monday, 19th August, at the age of sixty-six. Mr. Brignall, who was admitted a solicitor in 1915, was formerly in the legal department of the Post Office. He had practised at Stevenage since 1915, and had also practised at Knebworth since 1924.

MR. E. T. HATT.

Mr. Edwin T. Hatt, retired solicitor, of Oxford, died recently at the age of sixty-three. Mr. Hatt, who was admitted a solicitor in 1895, practised at Oxford and Reading.

MR. H. W. JOHNSON.

Mr. Herbert Walter Johnson, solicitor, of Austin Friars, E.C., died on Wednesday, 21st August, at the age of seventy-five. Mr. Johnson, who was admitted a solicitor in 1881, was a partner in the firm of Messrs. Johnson, Jecks & Colclough.

MR. W. H. ROXBURGH.

Mr. William Henry Roxburgh, M.A., Oxon, solicitor, of John Street, Bedford Row, and Hornsey, died on Sunday, 25th August, at the age of seventy-six. Mr. Roxburgh was admitted a solicitor in 1885.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Motorist's Liability.

Q. 3208. A is the owner of a motor car, in respect of which she has a full comprehensive insurance, and which permits her herself or any other person with her knowledge and consent to drive the car. B, a friend of A, while driving the car, is involved in a collision with a lorry, damage being done to the car and serious injuries resulting to B and also to A and to B's wife, both of whom were in the car with B at the time. The insurers of the lorry are also the insurers of the car, and they deny that the accident was due to the negligence of the lorry driver, and contend that B was guilty of contributory negligence. Guidance is sought as to whether B's wife can claim damages against her husband or is she prevented by law from bringing an action against her husband in respect of a tort committed by him. Again, can A substantiate a claim against B or is she debarred from so doing on the grounds that she was present in the car at the time of the collision and could have taken steps to have prevented B's negligence had she been so disposed. A and B are friends and B was driving the car with the knowledge and consent of A.

A. At common law, husband and wife are incapable of suing each other for tort, but by the Married Women's Property Act, 1882, s. 12, a married woman can sue her husband for a tort committed by him in respect of her separate property. If she pays her own doctor's bill, and nursing home expenses, the wife can sue her husband, as the damage to her separate property is not too remote. She cannot, however, claim damages against him for pain and suffering. B can, therefore, claim damages against her husband, to the above limited extent. The principle that A had not abandoned control over B is deducible from *Pratt* v. *Patrick* [1924] 1 K.B. 488. Nevertheless, the opinion is given that, in spite of the delegation of control from A to B, A can sue B for negligence, as B's authority was impliedly revoked on his ceasing to drive properly.

The Landlord and Tenant Act, 1927.

Q. 3209. A lease of business premises granted in 1931 for seven years contains the following covenant against assignment, etc.: "And also that the lessee shall not nor will during the said term sell assign or underlet or part with the said premises or any part thereof unto any person or persons whomsoever." You will observe that it does not in any way refer to the consent of the landlord being obtained nor is there "any express provision to the contrary." "Law Notes Handbook" on the Act (1928 Ed.), at the bottom of p. 89, in the notes on this section, states the whole section appears to be governed by the words "containing a covenant, etc." so that it is possibly arguable that neither of the above provisoes is implied where the covenant against assignment, etc., is absolute, and contains no provision as to licence or consent. But in Hill & Phelps "Guide to the Landlord and Tenant Act, 1927" (1928 Ed.), on p. 50, it is stated that "covenants against assigning or underletting may be (*a*) absolute, or (*b*) covenants not to assign without licence or consent, etc., etc." The effect of this section is to read into all covenants against assigning, etc., a proviso that licence or consent is not to be unreasonably withheld notwithstanding any express stipulation to the contrary. Will you be good enough to inform me if there has yet been a decision on the point as to whether the proviso (*a*) applies to a lease containing such a covenant as that quoted above, and, if so, the reference thereto, and give me the benefit of your opinion as to whether proviso (*a*) is implied in this lease.

A. There has not yet been a decision as to whether proviso (*a*) applies to a lease containing such a covenant as that quoted in the question. The opinion is given that proviso (*a*) is not implied in this lease. In Woodfall's "Law of Landlord and Tenant" (23rd Ed., 1934), it is stated, at p. 837: "It is to be noticed that it (i.e., s. 19) only applies where the covenant is not to assign, etc., without licence or consent." This supports the first of the two views quoted in the question, viz., that the section does not apply to absolute covenants against assignment or underletting.

Alimony and Maintenance.

Q. 3210. A husband and wife after many years of reasonably happy married life, became estranged owing to comparatively minor domestic differences, and as a result, the wife, without sufficient cause as recognised by law, voluntarily left the husband. She managed to support herself for some months, during which period the husband made no contribution towards her maintenance. The husband then commits adultery, and the wife having filed her petition for divorce, files a supplementary petition claiming alimony pendente lite.

(1) Has the husband any defence to the wife's claim for alimony pendente lite, and/or to permanent maintenance after decree, seeing that she left him originally of her own free will and without just cause?

(2) Would the answer be different if the husband had made a voluntary allowance to his wife during their separation?

A. (1) The husband has no defence to the wife's claim for alimony pendente lite, and/or to permanent maintenance, even though she left him originally of her own free will and without just cause. An actual covenant not to make any further claim against her husband would not debar the wife, as held by the House of Lords in *Hyman* v. *Hyman* [1929] 73 Sol. J., 317. *A fortiori*, the wife is entitled to claim, where she has entered into no such covenant, even though she left her husband without sufficient cause.

(2) The fact that the husband had made a voluntary allowance during the separation would not affect the answer. In such an event, the husband would have less reason for opposing any application for alimony or maintenance.

Renewal of Central Heating Boiler.

Q. 3211. A takes a lease of property for 40 years and covenants (inter alia) to keep the landlord's fixtures in repair fair wear and tear excepted. At the expiration of 21 years the central heating boiler burst, and it is proved that the bursting was due to fair wear and tear. In other words, by its great age it had become worn out. Is it the landlord's or the tenant's liability to put in a new boiler. The landlord argues that he has not covenanted to make any repairs or replacements and that it is clearly not his liability but admits that he cannot force the tenant to put in a new one and says to the tenant that he can continue for the remainder of his lease without a boiler if he so wishes. The tenant on the other hand maintains that the rent he pays is based on the amenities that he was intended to enjoy throughout the lease and had there been no central heating boiler and other

amenities he would not be paying the rent that he is, and therefore maintains that whilst it is the tenant's duty to effect repairs it is the landlord's duty under a fair wear and tear clause to put in a new boiler that is past repair so that the tenant may enjoy the amenities which his rent contemplated. Who is correct?

A. The landlord's contention is correct, as there is no implied covenant by a lessor that the house will endure for the term. See *Woodfall* on Landlord and Tenant (23rd Ed. 1934), p. 213. The amount of the rent raises no implied agreement as to the extent of the amenities to be provided.

Recovery of Insurance Premiums.

Q. 3212. Your opinion is requested on the following:—(*a*) Whether an insurance company can sue their assured in a court of law for premiums due under the policy in view of the fact that the policy of insurance contains the usual arbitration clause.

The following is a copy of the arbitration clause in the particular circumstances of this case: "If any difference or dispute of any kind whatsoever shall arise between the assured or any client and the company in respect of this policy or in respect of any claim or of any matter or thing or any liability arising or alleged to have arisen hereunder or otherwise connected herewith directly or indirectly the same shall be referred to the final determination and award of a single arbitrator to be agreed upon by both parties. It shall not be competent to prosecute any action against the company in a court of law for sums due or alleged to be due under this policy except for the amount of the award and the obtaining of the said award shall be a condition preceding to the liability of the company to make any payment under this policy." This question seems to be discussed in the case *Pinch Bros.* v. *Lewis*, L. R. [1923] 1 K.B., page 690.

A. The usual effect of non-payment of premiums is to cause the policy to lapse, whereupon no liability for premiums remains. Non-payment of premiums is notice of termination by the assured, and the company have no cause of action thereafter. The company is exonerated from the risk, as soon as the premium is in arrear, and there is no right to specific performance against the assured. The question is therefore answered in the negative, as it is difficult to see how the liability can continue, once a premium is unpaid. If, however, the claim is for an instalment of a premium, and the liability of the company was continuous, the non-payment of an instalment is a repudiation of the policy, entitling the company to sue in court. If the policy is repudiated, the arbitration clause (being part of the policy) is no longer binding.

Solicitor's Negotiating Fee for Loans.

Q. 3213. By the Solicitors Remuneration Act General Order, 1925, Pt. I of Sched. I of the Order of 1883 was added to as follows: "Mortgagor's solicitors for negotiating loan—half the amount of a mortgagee's solicitor's fee on negotiating a loan of the same amount." We should like your views on the effect of the General Order of 1925 as cited above in the following cases:—

(1) Where the mortgagee and mortgagor are each represented by separate solicitors and either the solicitors for the mortgagor or the solicitors for the mortgagee procure a third party to advance the money for the loan in respect of which such third party's solicitors have made it a condition that their procuration fee shall be paid. Is the solicitor for the mortgagor or the solicitor for the mortgagee, whichever one effects an introduction to the solicitor for the third party, entitled to charge half the negotiating fee the solicitor for such third party is entitled to?

(2) Where mortgagor and mortgagee are represented by the same solicitor and this solicitor procures the loan, it is clear he is entitled to charge one negotiating fee under Pt. I of Sched. I of the Order of 1883, but is he also entitled to charge the other party half the amount of the negotiating fee in addition? The principle involved in case No. 2 obviously depends upon the ruling on the facts in case No. 1 unless you are aware of any rule precluding the charging of the additional or separate half negotiation fee where both mortgagee and mortgagor are represented by the same solicitor. The issues raised in this letter are important, and we have a case in point in the office at present. In your reply therefore we shall be obliged if you will refer us to any authorities you rely upon in support of your views and we should like to have your opinion as early as possible.

A. (1) The position is peculiar, because the mortgagee, that is the person advancing the money to the mortgagor, is himself a borrower; and presumably will have to charge his interest in the property with the loan from the third party. In short, he will also be a mortgagor to a third party. In such a case apparently the solicitors who procure the loan for the borrowing party will get the mortgagor's scale of remuneration for negotiating, whilst the solicitors for the third party will get the mortgagee's scale fee. It is not clear why, if the mortgagor's solicitors procure a loan from a third party it is necessary to go to the mortgagee at all. One would have expected the third party to have become the mortgagee.

(2) The position would apparently be similar if the same solicitor acted for the mortgagor and the mortgagee, for he would be in the position of the borrower's solicitor so far as the third party is concerned, and would thus be entitled to half the negotiating fee charged by the solicitors for such third party.

Solicitors at Board Meetings.

Q. 3214. Has a director of a private or public limited company a right to be accompanied or represented by his or her solicitor at a meeting of the board of directors if the articles are silent thereon?

A. If the articles are silent on the point, no director of a private or public limited company can claim to be accompanied or represented by a solicitor, at a board meeting, as a matter of right. The meetings are private, and are primarily held in the interests of the company. Any director, who feels that a wrong action has been taken, can apply to the court for a declaration that a resolution is invalid, and for an injunction against its being acted upon.

Declaration of Liability.

Q. 3215. A farm labourer lost the sight of one eye as the result of an accident arising in the course of his employment, and received for a time full disability compensation and then for a time partial compensation. He is now earning again the full wages of a farm labourer. The sight of one eye is completely gone, and the doctors think it unlikely that the other eye will be affected but are unable to say this with any certainty. The workman desires to obtain a declaration of liability to keep his rights open if in the future by reason of his accident his earning capacity should be impaired. The employer's insurance company contend that the workman is not entitled to a declaration of liability having regard to the decision in *Union Cold Storage Co.* v. *Poole* [1932]. Is this contention sound or unsound, and why?

A. The contention is sound, as the applicant only has one occupation, in which he is able to earn full wages again. In the *Poole Case*, quoted in the question, the applicant had three occupations, and there was a possibility of his earning capacity being impaired at one of them. Nevertheless his case failed, as he admitted he could work just as well as he could before. It seems impossible to distinguish the present case from that.

To-day and Yesterday.

LEGAL CALENDAR.

26 AUGUST.—Sir Robert Parning, who died on the 26th August, 1348, was the first Lord Chancellor trained in the Common Law to hold the Great Seal. In May, 1340, he had been appointed a Justice of the Common Pleas, and only two months later had been promoted to be Chief Justice of the King's Bench. Before the end of the year, he had exchanged his new office for that of Treasurer. Finally, in October, 1341, he became Lord Chancellor, retaining his office till his death. Coke says that he was distinguished for his profound and excellent knowledge of the law.

27 AUGUST.—On the 27th August, 1645, Edward Littleton, Charles I's Lord Keeper, died at Oxford, where he had joined the King's army.

28 AUGUST.—John Leach, the son of a Bedford coppersmith, was born on the 28th August, 1760. He was at first destined for an architectural career, but his talents led him to the law, and he joined the Middle Temple in his twenty-fifth year, after a few more or less unproductive years in the office of an eminent architect. He was called to the Bar in 1790. His success was finally assured when he attracted the favourable attention of the Prince Regent, and he became successively Vice-Chancellor and Master of the Rolls.

29 AUGUST.—On the 29th August, 1311, Walter de Norwich obtained his first judicial appointment as a Baron of the Exchequer. Thereafter, his life presents a patchwork of an extraordinary variety of duties and offices. In 1312, he became Lord Chief Baron, and with some intervals continued as such for the rest of his life. He also acted as lieutenant to the treasurer, as keeper of the treasury, as treasurer and as a justice of oyer and terminer. In 1322, he played a historic part as one of the judges at the trial and condemnation of the Mortimers. He died in 1329, and was buried in Norwich Cathedral.

30 AUGUST.—On the 30th August, 1759, Mr. Baron Legge died after twelve years' service in the Court of Exchequer, where his learning, his impartiality and his moderation had gained him a very high reputation. He was the second son of the first Earl of Dartmouth and through his mother, Lady Anne Finch, was a great grandson of Heneage Finch, Earl of Nottingham, Charles II's great Chancellor. He was only fifty-five when he died. He was a member of the Inner Temple when he was called to the Bar in 1728.

31 AUGUST.—Everyone who knows his Dr. Johnson knows that Boswell's father was a judge, and remembers how Boswell once confessed to the great Doctor that he was more at ease with him than with his father, receiving the explanation: "Why, sir, I am a man of the world. I take in some degree the colour of the world as it moves along. Your father is a judge in a remote part of the island, and all his notions are taken from the old world." Lord Auchinleck, such was his judicial title, was a sound scholar, a laborious judge, a strict Presbyterian and a stout Whig. It is he who is said to have designated Johnson as "Ursa Major." He died on the 31st August, 1782, after twenty-eight years' judicial service.

1 SEPTEMBER.—On the 1st September, 1667, Samuel Pepys records in his diary: "Our new Lord Keeper, Bridgeman, did this day, the first time, attend the King to chapel with his Seal . . . The Attorney-General is made Chief Justice in the room of my lord Bridgeman; the Solicitor-General is made Attorney-General; and Sir Edward Turner made Solicitor-General." The report of all these promotions was premature, for Bridgeman remained Chief Justice as well as Lord Keeper for eight months.

THE WEEK'S PERSONALITY.

Lord Keeper Littleton had law in his blood. Descended from the author of the famous "Treatise on Tenures," he was surrounded by legal influences. His father was Chief Justice of North Wales, his grandfather on his mother's side was Chief Justice of South Wales, and one of his uncles was Lord Chief Baron under James I. He was "a handsome and proper man of a very graceful presence, and notorious for courage, which in his youth he had manifested with his sword. He had taken great pains in the hardest and most knotty part of the law, as well as that which was more customary, and was not only very ready and expert in the books, but exceedingly versed in records, in studying and examining whereof he had kept Mr. Selden company with whom he had great friendship and one who had much assisted him, so that he was looked upon as the best antiquary of the profession who gave himself up to practice." When, on the outbreak of the Civil War, he joined the King at Oxford, he raised a volunteer corps of lawyers and proved himself an excellent officer. But, unhappily, while drilling his troops one morning in Bagley Wood he was caught in a thunderstorm. The cold he took developed into a fever which quickly carried him off.

A JUDGE AND AN ACQUITTAL.

A jury at Malone, in New York State, recently took twenty-eight hours to consider the case against a "beer baron" facing charges of non-payment of income tax on profits alleged to have been obtained from illegal traffic in beer. When, after that long retirement, a verdict of acquittal was announced, the learned judge exclaimed: "Gentlemen, it is a verdict like this that shakes the confidence of law-abiding people in the integrity of juries. It is evident you have reached a verdict based, not on the evidence, but on other reasons." Whatever reasons His Honour had in mind, they were certainly not in the same order as those brought to bear on one Australian jury in a murder case many years ago. Said counsel for the defence: "At great length, gentlemen of the jury, I have stated the reasons which cause me to believe in the prisoner's innocence and to regard him as a personal friend. Gentlemen, the prisoner in the dock *is* a very dear personal friend, and if he falls by your hands, I will avenge his honour and my loss. As a gentleman of an ould Irish family who can snuff a candle with a revolver at twelve paces, I call upon you to place my friend right in the eyes of society. I leave the case in your hands, feeling satisfied that you will not accuse me of employing the language of menace."

JURIES UNDER FIRE.

It is a long time since any English judge uttered such forceful criticisms as fell from the bench upon the heads of the Malone jurymen—probably not since the days of the great State Trials. Then it was at their peril that a jury found a verdict other than that which was expected of it. Thus, the failure to convict Sir Nicholas Throckmorton made Queen Mary ill for three days, during which time the unhappy jurymen lay in prison, and when she emerged from her sick chamber, it was to fine them £2,000 each. Even in Victorian times, the judges sometimes expressed themselves very plainly on the vagaries of the jury-box. Thus, after one surprising acquittal, Mr. Baron Alderson exclaimed: "Good God! Can't I have another jury and let those twelve persons go into the other court where they can't do so much mischief? No doubt there are some men who never can comprehend what 'evidence' is, but that twelve such should come *together* to-day and let that man off!" To the prisoner, he said: "Prisoner, the jury have acquitted you! Heaven knows why! No one else in the whole court could have the slightest doubt of your guilt . . . but you are acquitted and I can't help it."

Mr. Francis Sidney Herbert Franklin, solicitor, of Bournemouth, left £10,313, with net personalty £10,163.

Reviews.

The Causes of War, and the Conditions of Peace. By QUINCY WRIGHT. 1935. Demy 8vo. pp. xi and (with Index) 148. London, New York, Toronto: Longmans, Green & Co., Ltd. 5s. net.

This is a thoughtful and valuable study. The heart of the matter is touched. One of the conditions of peace is "an organisation of the world community adequate to restrain conflicts. We cannot anticipate that human beings and states will renounce opposition to the *status quo* and plans of reform to such an extent that conflicts will not occur. Consequently, controls must be prepared to deal with conflicts so that violence will not accompany them."

It is unlucky that the best control so far evolved, while it has the blessing of informed American opinion, is quite beyond the understanding of the vast majority of American citizens. The League of Nations is lamed, perhaps beyond cure, by the non-accession of the United States. Its time of trial is here, momentous and threatening, and nothing but good wishes comes from the most powerful single unit in the world. That is a disaster of great magnitude.

The generally unpractical attitude of the United States does not go unreflected in this book. Mr. Quincy Wright wants a "continuous charting of public opinion changes in the principal populations on political questions, particularly on attitudes towards other states." How is that opinion to be ascertained? It can be guessed at with more or less approximation to certainty in the democratic states. In the controlled states such as Italy, Germany, and Russia it is quite unascertainable. It is not population opinion which counts; it is the opinion of the directing group. Of course it can be answered that the charting of that opinion can be the object. But who can learn it during the long periods of diplomatic silence? Is it not often to be inferred only from the acts it motivates? And those acts may be acts of war.

What is the evidence of a "world trend towards unity and integration?" There is evidence of a strong force operating in that direction, which has its effect on the resultant of all world forces. But it is far from universal. Very dangerous forces are in operation directly contrary to it. The reviewer does not share Mr. Wright's confidence in the success of the League of Nations as at present constituted. If it can adjust the Italian-Abyssinian conflict without war an immense gain will result to the forces of reason and peace, but it is to be feared that national and personal prestige will be the determinants of that controversy.

Books Received.

Executors and Administrators. Second Edition, 1935. By N. E. MUSTOE, M.A., LL.B., of Gray's Inn, Barrister-at-Law, with Executorship Accounts by W. A. KIERAN, A.S.A.A. Demy 8vo. pp. xxxv and (with Index) 309. London: Butterworth & Co. (Publishers) Ltd. 12s. 6d. net.

The Law of Landlord and Tenant. By W. A. HOLDSWORTH. 49th edition, revised and edited by E. A. JESSEL, B.A. (Oxon), of the Inner Temple, Barrister-at-law. 1935. Crown 8vo. pp. xii and (with index) 188. London: George Routledge and Sons, Ltd. 3s. 6d. net.

Air Raid Precautions. Memorandum No. 1—Treatment of Casualties and Decontamination of Personnel. 1935. London: H.M. Stationery Office. 4d. net.

The Housing Act, 1935. By ALFRED R. TAYLOUR, M.A., of Lincoln's Inn, Barrister-at-law. 1935. Demy 8vo. pp. xxxviii and (with index) 171. London: Hadden, Best & Co., Ltd. 8s. 6d. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]

Notes of Cases.

Court of Appeal.

Commissioners of Inland Revenue *v.* Crawshay.

Lord Hanworth, M.R., Romer and Maugham, L.JJ. 10th July, 1935.

REVENUE — INCOME TAX — TRUST FUND — ONE OF BENEFICIARIES RESIDENT ABROAD—SECURITIES ISSUED BY TREASURY FREE FROM TAX—PART OF FUND—NO APPROPRIATION OF SECURITIES—LIABILITY OF PERSON RESIDING ABROAD—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), s. 46.

Appeal from a decision of Finlay, J.

A beneficiary under a will resided wholly abroad. The trust funds in the hands of the Public Trustee fell into three categories, and one of these came within the ambit of s. 46 of the Income Tax Act, 1918, which enabled the Treasury to issue securities with a condition that the interest should not be liable to tax or super-tax so long as the beneficial ownership was in persons not ordinarily resident in the United Kingdom. This beneficiary's interest covered a very large proportion of the income of the fund. He claimed to come within s. 46, and so not to be liable to tax on the income he received, since, he said, the Public Trustee should marshal the securities held by him so as to pay this income from securities within s. 46. On this basis he claimed a refund of the tax paid by him during the six years ending in April, 1932. There had been no appropriation of the securities for the purpose of paying the beneficiary or any of the other annuitants, and there had been no appropriation of the income, the fruit of the securities being treated as a mixed fund and the payments being made out of the mixed receipts. Finlay, J., held that, although there had been no appropriation, the income from the securities could be treated as having been marshalled so that the moneys received by the beneficiary who lived abroad were the fruit of securities which fell within s. 46. Accordingly the refund should be made. The Commissioners appealed.

LORD HANWORTH, M.R., allowing the appeal, said that the trustee's duty was to see that the money was so conserved in his hands as to meet the various annuities. Because the income of a certain set of securities might fall below the annual sum which a particular annuitant was entitled to receive it would be dangerous to appropriate particular securities to the payment of particular annuities. Here there had been no appropriation and there could not be imputed to the trustee a duty of having done something which might have been risky. There was no imputation to be made against him that he ought to have marshalled the securities or the income. The cases of *Attorney-General* v. *London County Council* [1907] A.C. 131; *Edinburgh Life Assurance* v. *Lord Advocate* [1910] A.C. 143; and *Sterling Trust Ltd.* v. *Commissioners of Inland Revenue*, 12 T.C. 868, laid down no principle which would make it right to assume that there had been an appropriation which for this purpose would have inured to the advantage of this particular beneficiary, but which was not made, probably because the trustee thought it unwise, having regard to the rights of the beneficiaries *inter se*.

ROMER and MAUGHAM, L.JJ., agreed.

COUNSEL: *The Attorney-General* (Sir Thomas Inskip, K.C.) and *R. Hills*; *Needham*, K.C., and *T. N. Donovan*.

SOLICITORS: *The Solicitor of Inland Revenue; Gustavus Thompson & Sons.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

London Assurance *v.* Kidson.

Roche, L.J., and Swift, J. 30th July, 1935.

PRACTICE—INSURED PREMISES—OWNER DECEASED—ALLEGATION OF ARSON BY HIM—ACTION TO RECOVER SUMS PAID—PARTICULARS OF POINTS OF CLAIM.

Appeal from a decision of Porter, J., in Chambers.

The plaintiffs claimed to recover from the administrator *pendente lite* of the estate of C, deceased, money paid by them under a policy of insurance in respect of a fire which had destroyed certain business premises belonging to C. The points of claim alleged that the fire broke out on the 5th September, 1931, at 8.28 p.m., and that it was caused by the deliberate act of C to defraud the plaintiffs. Porter, J., refused to order particulars of how and when it was alleged that C set fire to the premises, and whether it was alleged that he did it himself or employed another.

ROCHE, L.J., allowing the appeal, said that particulars of the deliberate act or acts alleged must be given fourteen days before any application to fix the date of the trial.

COUNSEL: *Paull; Vos.*

SOLICITORS: *Thomas Cooper & Co.; William Charles Crocker.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Berry and Another *v.* Tottenham Hotspur Football and Athletic Co. Limited.

Crossman, J. 9th, 23rd and 31st July, 1935.

PRACTICE — INTERROGATORIES — COMPANY — TRANSFER OF SHARE—DIRECTORS' REFUSAL TO REGISTER—POWER UNDER ARTICLES — "SPECIFYING GROUNDS" — "ASSIGNING REASONS."

B, being the registered holder of one ordinary share in the company, transferred it to S, but the company refused to register the transfer. Article 16 of the company's articles provided that: "The directors may decline to register any transfer of shares made by a member who is indebted to the company, or in case the transferee shall be a person of whom the directors do not approve or shall be considered by them objectionable, or the transfer shall be considered as having been made for purposes not conducive to the interests of the company, and the directors shall not be bound to specify the grounds upon which the registration of any transfer is declined under this article . . ." In an action against the company, the plaintiff sought to administer interrogatories to the defendant company to discover under which branch of their power the directors had acted.

CROSSMAN, J., in giving judgment, said that the words in this article were much stronger than those in the article in *Duke of Sutherland* v. *British Dominions Land Settlement Corporation* [1926] Ch. 746, where such interrogatories were allowed. "Specifying grounds" in this case could not be construed as the same thing as "assigning reasons" in that case. Here the directors were excused from naming the species of grounds on which they acted. These interrogatories would override something by which the parties were bound and they could not be allowed.

COUNSEL: *Manningham-Buller; J. Lindon.*

SOLICITORS: *Margetts, Jenkins & Hornby; Parker Garrett & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Jones *v.* London County Council.

Luxmoore, J. 23rd July, 1935.

POOR LAW—SUPERANNUATION—NURSE—EMPLOYMENT BY SUCCESSIVE LOCAL AUTHORITIES—CONTRACTING OUT OF SUPERANNUATION BENEFIT—AGREEMENT TO CANCEL THIS ELECTION—WHETHER VALID—POOR LAW OFFICERS SUPERANNUATION ACT, 1896 (59 & 60 Vict. c. 30)—POOR LAW OFFICERS SUPERANNUATION ACT, 1897 (60 & 61 Vict. c. 28)—LOCAL GOVERNMENT ACT, 1929 (19 & 20 Geo. 5, c. 17).

From 1904 to 1907, the plaintiff was employed as a probationer nurse by the Southwark Board of Guardians, who deducted 2 per cent. annually from her wages under the Poor Law Officers Superannuation Act, 1896. Later, she was employed as a charge nurse by the Metropolitan Asylums Board, and being a female nurse under the Poor Law Officers Superannuation Act, 1897, she gave written notice of her intention not to avail herself of the provisions of the Act of 1896, contracting out of the superannuation benefit, so that no deduction was made from her wages. In 1909 she became a superintendent nurse under the Holborn Board of Guardians, to which she gave no further notice and no deductions were made. In 1923 she became a charge nurse under the Bermondsey Board of Guardians. Her first month's wages having been made without deduction, she wrote that she wished to contribute to the superannuation fund, and was told that she must pay the amount which would have been deducted by the Asylums Board and the Holborn Board. Accordingly, she paid £35 12s. 3d., and deductions were made till 1927. In that year the Bermondsey Board appointed her assistant matron of the Shirley Residential School, when she ceased to be a female nurse within the Act of 1897, and was no longer in a position to contract out of the Act of 1896. Deductions were made in the usual way. In 1930, under the Local Government Act, 1929, she was transferred to the London County Council. Subsequently, deductions were made, on the footing that she had completed twenty years service, at 3½ per cent. In 1933, the plaintiff was informed that as she had contracted out of the Act of 1896 while she was under the Asylums Board, the service during that and the two following periods could not be aggregated for superannuation, that the deductions made in the period of service under the Bermondsey Guardians were illegal and that the contributions overpaid would be returned. Consequently, she received £54 5s. 9d., under protest, and the rate of deduction was reduced to 2½ per cent.

LUXMOORE, J., said that no express provision in the Act of 1897 prohibited one who had contracted out of the Act of 1897 from agreeing with the employing authority to cancel the election to contract out. The agreement with the Bermondsey Guardians was valid. The plaintiff as an officer who had made contributions at the time she was transferred to the defendant council could claim that her service be treated as service for the purposes of the Act of 1896 (see the London County Council's Superannuation and Provident Fund Scheme). It exceeded twenty years, and the rate of deduction must be 3½ per cent. The defendants must take back the £54 5s. 9d. and pay costs.

COUNSEL: *Roxburgh*, K.C., and *E. Woodward; Radcliffe*, K.C., and *H. H. Williams.*

SOLICITORS: *Stutfield & Son; Solicitor to London County Council.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Burnett *v.* Burnett.

Bucknill, J. 19th July, 1935.

DIVORCE—PETITION FOR VARIATION OF SETTLEMENTS—SETTLEMENTS MADE DURING SUBSISTENCE OF FORMER MARRIAGE—APPOINTMENT IN EXCESS OF POWERS IN FAVOUR OF AFTER-TAKEN WIFE—EXTENT OF JURISDICTION—SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925 (15 & 16 Geo. 5, c. 49), s. 192.

These were cross-motions arising out of a petition for variation of settlements. The parties were married on 27th June, 1929, the husband, by a previous marriage, having had two children, daughters, now aged ten and eight respectively. The wife obtained a decree *nisi* on 13th April, 1934, which was made absolute on 22nd October in that year. On 2nd November she petitioned for variation of settlements.

The registrar reported that there were no children of the marriage of 1929, and that a preliminary point was taken by the respondent and the trustees that the settlements

in question were not such as could be varied by the court. The settlements consisted of an indenture dated 8th June, 1925, an indenture dated 6th October, 1927, and a deed of appointment executed in June, 1929, exercising powers given by the settlements. The settlements were both made by the respondent while he was married to a previous wife, and might be regarded as post-nuptial settlements as regards that marriage. It was claimed that they were also ante-nuptial settlements in relation to the later marriage. Neither settlement was made in contemplation or on account of the then existing or any other identified marriage. They were protective settlements made on account, and in consideration of the payment of the settlor's debts by a third person; and the references to marriage were in the widest possible terms, such as "any wife and issue of his for the time being in existence." A power to appoint to any child or more remote issue of his then subsisting or of any future marriage had been exercised in favour of the two children of the first marriage. A power to appoint the income of the fund to a "wife who may survive him during the residue of her life while she remains his widow," was exercised by a deed dated 24th June, 1929. In the registrar's judgment this last was clearly an ante-nuptial settlement, but the respondent had purported to confer an interest greater than he was given power to appoint, namely, a life interest without limitation as to widowhood. As regards the principal settlements, the present case was almost identical with *Hargreaves* v. *Hargreaves* [1926] P. 43, the only distinction being that in the present case the husband was not free when he executed the settlements to make any other marriage. Thus the settlements were *à fortiori* not variable as ante-nuptial settlements. The petition for variation should therefore be dismissed.

The petitioner now moved the court to vary the registrar's report and the respondent asked for its confirmation.

BUCKNILL, J., founding his judgment on a passage in the judgment of Hill, J., in *Hargreaves* v. *Hargreaves*, *supra* (at p. 45), which was approved by Lord Justice Romer, in *Melvill* v. *Melvill* [1930] P. 159, at p. 178 (74 SOL. J. 233), said that applying that explanation of the meaning of ante-nuptial settlement to the present case, the principal settlement in order to be "ante-nuptial" within the meaning of s. 192, must be made in contemplation of it because of a second marriage. But the settlor at the time when the settlement was made was already married. He (his Lordship) did not think that the section was intended to cover such a case as the present. To bring the section into operation there must be a "marriage" which was the subject of the decree of divorce, and it was in contemplation of that marriage, and because of that marriage, that the settlement must be made. He did not think that the Legislature intended a spouse of one existing marriage to contemplate a second marriage, so as to be able to execute a settlement which was ante-nuptial as regards such contemplated marriage, when at the time being he or she was married and therefore incapable then of entering into a second marriage. The appointment, however, to the present petitioner by the deed of 1929, under the powers conferred by the original first settlement, was clearly an ante-nuptial settlement within the section, but the court had no jurisdiction under that section to vary an appointment in such a way that in the result the principal settlement was also varied, although that settlement was not within the section. The settlor, the present respondent under the principal settlement, only had power to appoint to a wife who might survive him while she remained his widow. Thus it only covered a period of time which began with the death of the respondent. But if the appointment were varied by varying the period to her life while single, thereby starting during the respondent's life, then the principal settlement would itself be varied, because the appointment covered a different period of time from that which the principal settlement allowed. The registrar's report would therefore be confirmed.

COUNSEL: *Alexander Grant*, K.C., and *Hon. Victor Russell*, for the petitioner; *A. Richard Ellis*, for the respondent; *L. W. Byrne*, for the trustees of the settlement; *F. L. C. Hodson* and *Karminski*, for the children of the first marriage.

SOLICITORS: *Francis Miller and Steele*, for *Dickinson, Miller and Turnbull*, Newcastle-on-Tyne: *Radcliffes and Hood, St. Barbe Sladen and Wing; Gamlen, Bowerman and Forward*, for *Cottrell & Son*, Birmingham.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

TABLE OF CASES previously reported in current volume.—Part II.

	PAGE
Archie Parnell and Alfred Zeitlin, Ltd. *v.* Theatre Royal (Drury Lane) Ltd.; Same *v.* Same, Cochran (Third Party).	574
Bowden's Settlemet, *In re*; Hulbert *v.* Bowdenn	625
British Coal Corporation and Others *v.* The King	541
City of Manchester (Ringway Airport) Compulsory Purchase Order, 1934, *In re*	503
Cohen *v.* Donegal Tweed Co. Ltd.	592
Commissioner of Income Tax, Madras *v.* P.R.A.L. Muthukaruppam Chettiar	501
Commissioners of Inland Revenue *v.* Ramsay	626
Cook *v.* Alfred Plumpton Limited; Same *v.* Henderson	504
Corporation of London *v.* Lyons, Son & Co. (Fruit Brokers) Limited	558
Croxford and Others *v.* Universal Insurance Co. Ltd.	559
Dewar *v.* Commissioners of Inland Revenue	522
Davis & Collett, Ltd., *In re*	609
Dott *v.* Brown	610
Ebbw Vale Steel, Iron & Coal Co. *v.* Tew; Same *v.* Richards; Same *v.* Lewis	593
Faraday *v.* Auctioneers and Estate Agents Institute of the United Kingdom	502
H.M. Postmaster-General *v.* Birmingham Corporation	592
Harold Wood Brick Co. *v.* Ferris	502
Hassall *v.* Marquess of Cholmondeley	522
Hodges *v.* Jones	522
Jennings *v.* Stephens	559
Joseph *v.* East Ham Corporation	625
Judgment Debtor (No. 23 of 1934), *In re* a	625
Ley *v.* Hamilton	573
Locker & Woolf Ltd. *v.* Western Australian Insurance Co. Ltd.; Same *v.* Same (Motion)	574
London County Council *v.* Berkshire County Council	504
Knott *v.* Knott	626
Malfroot & Syer *v.* Noxall, Ltd.	610
McKenna (Inspector of Taxes) *v.* Eaton-Turner	609
Moore and Others *v.* Attorney-General for the Irish Free State and Others	501
Mountford *v.* London County Council	503
Nash *v.* Stevenson Transport Ltd.	542
Odhams Press Limited *v.* London and Provincial Sporting News Agency (1929) Limited	541
Offer *v.* Minister of Health	609
Smart *v.* Lincolnshire Sugar Co. Ltd.	593
Stuart *v.* Haughley Parochial Church Council	559
Timpson, Executors of Mrs. Katharine L. *v.* E. H. Yerbury (Inspector of Taxes)	522
Tynedale Steam Shipping Co. Ltd. *v.* Anglo-Soviet Shipping Co. Ltd.	523
Uttley *v.* Alfred J. Hooper & Co.	542
Weigall *v.* Westminster Hospital	560

Legal Notes and News.

Professional Announcements.

(2s. per line.)

SOLICITORS & GENERAL MORTGAGE & ESTATE AGENTS ASSOCIATION.—A link between Borrowers and Lenders, Vendors and Purchasers.—Apply, The Secretary, Reg. Office: 12, Craven Park, London, N.W.10.

Notes.

It is announced that the funds of the Equity and Law Life Assurance Society now exceed £20,000,000.

Mr. H. D'O. W. Astley, solicitor, Town Clerk of Hungerford, Berks, for forty-six years, has been presented with a silver salver on the occasion of his retirement. Mr. Astley was admitted a solicitor in 1888.

Mr. Alexander Moncreiff Coutanche, Attorney-General for Jersey since 1931, was sworn in last Tuesday as Bailiff before the Royal Court of the Island. He succeeds Mr. C. E. Malet de Carteret, who recently resigned the office.

The Council of the Institute of Bankers announce that of the 14,027 candidates who entered for the associate examination this year, 981 have completed Part II of the examination, thereby becoming Associates of the Institute, and 1,185 have passed Part I.

In the Vacation Court recently, counsel used the word "pinch" instead of "steal." Mr. Justice Hilbery: "What did you say?"—Counsel hastily substituted the correct word. His Lordship: "I am almost inclined to give costs against you for using language that is not forensic."

The progress already made in the elimination of unnecessary noises from town life is emphasised in the first annual report of the Anti-Noise League, 66, Victoria-street, S.W.1, which

points out, however, that the promising beginning and the still greater work to be done are handicapped by financial limitations.

Statistics of crime in England and Wales for 1933 are contained in a Blue Book which has just been published by H.M. Stationery Office, price 3s. 6d. The persons found guilty of non-indictable offences in 1933 numbered 540,955, including 284,528 found guilty of road traffic offences, and 30,630 found guilty against the Revenue laws.

The Records Branch of the Kent Archæological Society is collecting and preserving records of local history. These records constitute the main material of parish and manorial history and illustrate the life of the people down to recent time. The Record Office has allotted the branch storage room in the old prison at Canterbury. Documents representing seventy or eighty parishes have already been collected.

The Minister of Transport is considering the best means to adopt in order to counteract a tendency among new drivers of motor vehicles to avoid submitting themselves for the regulation tests. It is obvious to the examiners that many persons who are required to submit to a test of their driving capacity are refraining from doing so. The tests are obligatory for all persons who obtained their licences on or after 1st April last year.

Whether an air liner, resting on its own wheels and used as a refreshment bar, was in that position a temporary building, was a question which Southend County Bench was asked to decide last Wednesday, says *The Times*. The Chairman said that the Bench had already had to decide whether an omnibus was a temporary building, and now they were making history by deciding whether an aeroplane was a temporary building. It was stated that the aeroplane had no engine, but was not fixed to the ground in any way, and teas were served in it. The hearing was adjourned.

Wills and Bequests.

Mr. Edward James Gibson, solicitor, of Tunbridge Wells, left £140,149, with net personalty £133,604.

Mr. Thomas Mountain, solicitor, of Grimsby, left £13,617, with net personalty £9,155.

Mr. John Rogers, solicitor, of Falmouth, left £17,121, with net personalty £8,834.

Mr. Ernest William Way, solicitor, of Emsworth, Hants, left £37,181, with net personalty £11,785.

Mr. William Worsley Rashleigh, retired solicitor, of Sydenham, left £30,313, with net personalty £26,152.

Mr. Kenneth Champain Bayley, solicitor, of Durham, left £12,530, with net personalty £7,935.

Colonel Thomas Gwynne Powell, retired solicitor, of Monmouth, left £31,908, with net personalty £27,560.

Mr. Frederick Wicks, retired solicitor, of Southsea, left £11,449, with net personalty £11,316.

Mr. Septimus Rigby Weightman, solicitor, of Blundellsands, left £24,180, with net personalty £22,817.

Mr. Francis Noel Butler, of St. Neots, solicitor, left £16,832 with net personalty £11,568.

Mr. Henry Aytone Lindesay Rudd, M.A., of Tonbridge, retired solicitor, left £9,741, with net personalty £9,089.

Mr. George Frederick Clark, of Putney, solicitor, left £11,406, with net personalty £8,772.

NOTICE TO CONTRIBUTORS.

The Editor will be pleased to consider for publication contributions and correspondence from any professional source upon matters of legal interest.

All contributions (including correspondence) should be typewritten and on one side of the paper only, and must be accompanied by the name and address of the contributor.

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Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 12th September, 1935.

	Div. Months.	Middle Price 28 Aug. 1935.	Flat Interest Yield.	‡Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	113½	3 10 6	3 2 4
Consols 2½%	JAJO	84	2 19 6	—
War Loan 3½% 1952 or after	JD	105⅝	3 6 2	3 1 3
Funding 4% Loan 1960-90	MN	116½	3 8 8	3 0 11
Funding 3% Loan 1959-69	AO	102⅝	2 18 6	2 17 1
Victory 4% Loan Av. life 23 years	MS	116½	3 8 8	2 19 11
Conversion 5% Loan 1944-64	MN	120¼	4 3 2	2 3 11
Conversion 4½% Loan 1940-44	JJ	111	4 1 1	2 6 8
Conversion 3½% Loan 1961 or after	AO	105xd	3 6 8	3 4 4
Conversion 3% Loan 1948-53	MS	104	2 17 8	2 12 9
Conversion 2½% Loan 1944-49	AO	101xd	2 9 6	2 7 4
Local Loans 3% Stock 1912 or after	JAJO	95	3 3 2	—
Bank Stock	AO	365½	3 5 8	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	85	3 4 8	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	95	3 3 2	—
India 4½% 1950-55	MN	113	3 19 8	3 7 8
India 3½% 1931 or after	JAJO	94½	3 14 1	—
India 3% 1948 or after	JAJO	83½	3 11 10	—
Sudan 4½% 1939-73 Av. life 27 years	FA	119	3 15 8	3 8 3
Sudan 4% 1974 Red. in part after 1950	MN	115	3 9 7	2 15 4
Tanganyika 4% Guaranteed 1951-71	FA	114	3 10 2	2 16 9
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	111	4 1 1	2 12 6
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	109	3 13 5	3 7 6
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	103	3 12 10	3 9 3
Canada 4% 1953-58	MS	111	3 12 1	3 3 9
*Natal 3% 1929-49	JJ	100	3 0 0	3 0 0
*New South Wales 3½% 1930-50	JJ	101	3 9 4	—
*New Zealand 3% 1945	AO	101	2 19 5	2 17 7
†Nigeria 4% 1963	AO	115	3 9 7	3 3 7
*Queensland 3½% 1950-70	JJ	101	3 9 4	3 8 2
South Africa 3½% 1953-73	JD	108½	3 4 6	2 17 9
*Victoria 3½% 1929-49	AO	101	3 9 4	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	96	3 2 6	—
*Croydon 3% 1940-60	AO	100	3 0 0	3 0 0
Essex County 3½% 1952-72	JD	107	3 5 5	2 19 5
Leeds 3% 1927 or after	JJ	95	3 3 2	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	108	3 4 10	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	81	3 1 9	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	95	3 3 2	—
Manchester 3% 1941 or after	FA	97	3 1 10	—
*Metropolitan Consd. 2½% 1920-49	MJSD	99½	2 10 3	2 10 10
Metropolitan Water Board 3% "A" 1963-2003	AO	100	3 0 0	3 0 0
Do. do. 3% "B" 1934-2003	MS	98	3 1 3	3 1 5
Do. do. 3% "E" 1953-73	JJ	101	2 19 5	2 18 7
†Middlesex County Council 4% 1952-72	MN	115	3 9 7	2 17 6
† Do. do. 4½% 1950-70	MN	116	3 17 7	3 2 11
Nottingham 3% Irredeemable	MN	96	3 2 6	—
Sheffield Corp. 3½% 1968	JJ	106½	3 5 9	3 3 7
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	113	3 10 10	—
Gt. Western Rly. 4½% Debenture	JJ	126½	3 11 2	—
Gt. Western Rly. 5% Debenture	JJ	137½	3 12 9	—
Gt. Western Rly. 5% Rent Charge	FA	133½	3 14 11	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	128½	3 17 10	—
Gt. Western Rly. 5% Preference	MA	115½	4 6 7	—
Southern Rly. 4% Debenture	JJ	112½	3 11 1	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	113½	3 10 6	3 4 10
Southern Rly. 5% Guaranteed	MA	129½	3 17 3	—
Southern Rly. 5% Preference	MA	115½	4 6 7	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

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